INTERIOR BOARD OF INDIAN APPEALS

In the Matter of the Estate of Laura Wetsit Wells

42 IBIA 94 (01/05/2006)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

IN THE MATTER OF THE ESTATE OF:	:	Order Adopting Recommended Decision
LAURA WETSIT WELLS	:	
	:	Docket No. IBIA 04-80-A
	:	
	:	January 5, 2006

Appellant Keven Jackson seeks review of a Recommended Decision Modifying Inventory 1/ issued on January 12, 2004 by Administrative Law Judge Robert G. Holt in the estate of Laura Wetsit Wells (Decedent), deceased Fort Peck Indian, Probate No. RM 206-0156. 2/ For the reasons discussed below, the Board adopts Judge Holt's recommended decision. 3/

Background

Decedent died on August 11, 2002, having executed a will on March 24, 1995. Relevant to this appeal, at the time of her death, Decedent possessed interests in trust or restricted property located on Fort Peck Allotment Nos. 1717, 1720-A, 1721, and that portion of Allotment No. 1818 described as N1/2, SE1/4, SW1/4, Sec. 30, Lot 5, T. 27 N., R. 46 E. in Montana.

1/ The title of the order, which was originally "Recommended Decision Confirming Inventory" was amended by an order issued April 21, 2004.

2/ This appeal was originally entitled "Keven Jackson v. Rocky Mountain Regional Director, Bureau of Indian Affairs," based on the name of Appellant. Although the specific dispute at issue in this case is between Keven Jackson and the Regional Director, the recommended decision issued by Judge Holt is part of a probate case. The Board has determined to retain the name of the original probate case.

3/ In the same January 12, 2004 document, Judge Holt issued a Decision Distributing Estate in which he approved Decedent's will. That decision has not been appealed.

On July 8, 2003, Judge Holt issued a notice announcing that a probate hearing was scheduled for August 6, 2003. On August 2, 2003, Ronald Jackson, Decedent's grandson, wrote to Judge Holt to challenge the estate inventory. He claimed that Decedent had filled out applications for four gift deeds more than five years earlier but that the Bureau of Indian Affairs (BIA) had not taken action on the applications.

After holding the initial probate hearing, Judge Holt — acting under the Board's standing order in Estate of Douglas Leonard Ducheneaux, 13 IBIA 169 (1985) — issued a notice of disputed estate inventory and notice of supplemental hearing on August 28, 2003. 4/ He also issued a subpoena directing the Superintendent of the Fort Peck Agency to produce any gift deed applications completed by Decedent and to designate an employee to testify about the gift deed file. Judge Holt held a supplemental hearing on September 24, 2003 to take evidence concerning the estate inventory.

At the hearing, Ronald testified that Decedent had told him, five or six years before, that she was going to gift deed four tracts of land to him and that she had applied for the gift deeds.

A gift deed file for Decedent was admitted into evidence through an employee of the Fort Peck Agency. The file included four signed applications to gift deed four tracts of land from Decedent to Ronald Jackson. It also included four unsigned deeds to convey the four tracts to Ronald Jackson. The BIA employee testified that the deeds had been prepared by BIA but were not forwarded to Decedent for signature or further considered for BIA approval due to a credit hold imposed by the credit department at BIA, which sought to collect unpaid loan balances from the properties' lease income.

4/ In Ducheneaux, the Board established a procedure under which alleged errors in BIA's estate inventory are to be considered during a probate proceeding. Rather than separately refer inventory questions to BIA to consider and decide challenges to the correctness or completeness of the inventory of the trust estate, Ducheneaux allows an Administrative Law Judge (ALJ) to take evidence concerning the trust estate inventory and issue a recommended decision for the Board on disputed issues concerning the inventory. 13 IBIA at 177-78; see also First v. Rocky Mountain Regional Director, 42 IBIA 76, 77 n. 3 (2005). BIA is to be afforded an opportunity to participate in the proceedings before the ALJ. In this way, an ALJ may address both probate matters and estate inventory matters in a unified proceeding, subject to the parties' right of appeal to the Board.

Appellant, Decedent's grandson, testified that the four gift deeds should not be approved because Decedent only intended to give Ronald 20 acres, and not the approximately 148.81 acres allegedly provided for in the gift deeds. 5/

On January 12, 2004, Judge Holt issued a document entitled Decision and Recommended Decision, which included both the decision distributing the estate and the recommended decision modifying the inventory. Only the recommended decision is pertinent to this appeal. With respect to the evidence adduced at the hearing, Judge Holt stated in relevant part:

> Testimony and documents produced by the BIA established that on or about June 24, 1998 Decedent executed four Applications for Patent in Fee or For the Sale of Indian Land for the purpose of giving Decedent's interest in the following allotments to her grandson [Ronald]:
>
> Fort Peck Allotments Nos. 1717, 1720-A, 1721 and that portion of Fort Peck Allotment No. 1818 described as:
>
> Township 27 North, Range 46 East
> Section 30: Lot 5, N1/2 SE1/4 SW1/4
>
> The Land Titles and Records Office had cleared title but the Tribal Credit Committee had placed a hold on the transaction because of an outstanding loan owed by Decedent. [6/]
>
> BIA policy required employees to check about every three months when a transaction is not completed because of a credit hold. The file contains no record that such checks were made.

5/ Lanette Clark, Decedent's granddaughter and Keven Jackson's half-sister, also testified against the approval of the gift deeds, and Gertrude Clark, Ronald Jackson's mother, testified in favor of their approval, but neither provided factual testimony pertinent to the question of whether Decedent intended to make the specific gifts at issue here.

6/ This reference to the Tribal Credit Committee is inconsistent with the testimony of the BIA employee that it was the BIA credit department that had imposed a credit hold, but it is immaterial to the issues in this appeal who imposed the credit hold.

> Ronald testified that he had a meeting with the Superintendent, Fort Peck Agency in 2000, before Decedent died, and was informed that Decedent's loan had been paid and that the transaction should be approved and completed. At the time of Decedent's death, on August 11, 2002, the transactions had not been completed.
>
> * * * * * * *
>
> Having observed the demeanor of the witnesses and judged their credibility and having considered all of the evidence submitted, the undersigned concludes that the gift deed applications signed by Decedent on or about June 24, 1998 would have been completed during the life of Decedent if the BIA had gone forward with the transaction once Decedent had paid the loan for which the Tribal Credit Committee had requested a hold.

January 12, 2004 Decision and Recommended Decision at 7-8 (underlining in original). Judge Holt concluded that the inventory should be corrected to exclude Allotments 1717, 1720-A, 1721, and the identified portion of 1818. He included instructions directing the Superintendent of the Fort Peck Agency to take the actions necessary for deeds to be issued to Ronald in accordance with Decedent's applications.

Appellant filed a timely notice of appeal and statement of reasons with the Board on March 10, 2004. No briefs were received by the Board.

Discussion

To successfully challenge an estate inventory, the person seeking correction must show that BIA committed an error or omission that was responsible for the property being erroneously omitted from or included in the decedent's estate. First, 42 IBIA at 80 (citing Estate of Aaron Francis Walter, 16 IBIA, 192, 197 n. 6, 198 (1988)). The standard of proof is preponderance of the evidence. Id.

Judge Holt held that Ronald Jackson successfully challenged the estate inventory because BIA's testimony and gift deed file demonstrated that BIA erred in failing to complete the gift deed transactions once Decedent had paid the loan that had caused the transaction to be placed on hold.

Appellant does not directly challenge Judge Holt's finding that BIA procedurally erred in processing the gift deed applications. Rather, Appellant contends that the gift deed

applications themselves are invalid because Decedent did not intend to convey her interests in Allotments 1717, 1720-A, 1721, and 1818 to Ronald.

Appellant first argues, as he did at the Ducheneaux hearing, that Decedent told him and several other family members that she wanted to gift deed only 20 acres to Ronald, not the 148.81 acres in four tracts identified on the gift deed applications. Judge Holt clearly did not find Appellant's testimony persuasive against the weight of the existence of the gift deed applications and Ronald Jackson's countervailing testimony that Decedent told him that she intended to gift deed four tracts of land to him. The Board sees no reason to depart from this determination by Judge Holt.

Appellant additionally argues, for the first time on appeal, that the gift deed applications should not be viewed as demonstrating Decedent's intent to convey the four tracts of land to Ronald Jackson because of various "deficiencies" in the gift deed applications. These alleged deficiencies include that (1) the applications were largely filled out by someone other than Decedent; (2) the applications were not notarized and no one saw Decedent sign them, and thus the forms could have been completed after Decedent signed them; and (3) the signature on the applications was not the same as the signature on the will.

In general, the Board does not consider arguments or evidence presented for the first time on appeal. See Estate of Phillip Quaempts, 41 IBIA 252, 256 (2005). We depart from that rule in this case because Appellant had not seen the gift deed applications prior to the September 24, 2003 hearing before Judge Holt and could not have been expected to raise arguments about their validity at that time. See State of South Dakota v. Acting Great Plains Regional Director, 39 IBIA 283, 288 (2004) (addressing issue raised for the first time on appeal where appellants claimed inability to obtain pertinent information earlier); WELSA Heirship Determination of Robert Banks, 38 IBIA 136, 137 (2002) (considering evidence that appellant previously had been afforded no opportunity to present).

Nevertheless, the Board finds that Appellant's allegations of deficiencies in the gift deed applications unpersuasive. It is immaterial whether portions of the gift deed applications were filled out by someone other than Decedent, who was 88 years old at the time of making the applications and understandably may have desired assistance. Any possibility that another person erroneously or maliciously drafted the applications so as to convey four parcels, rather than the one parcel that Appellant alleges Decedent intended to convey, is negated by Appellant's own concession that "decedent executed 4 applications" and that "each application contained the following statement in the decedent's own handwriting: 'I am giving this land to my grandson [Ronald Jackson] for taking care of me.'" See Appellant's "Objections to Recommended Decision Confirming Inventory" at 1.

Appellant provides no explanation as to why Decedent would have helped to complete four separate applications if she had intended to convey only one parcel.

Appellant's admission that each application contains an acknowledgment of the gift in Decedent's own handwriting also undermines Appellant's contention that the applications are invalid because the signature on the gift deed applications is not Decedent's signature. Appellant provides no reason why Decedent would have affirmatively acknowledged the gift of each allotment by a written statement on each gift application if she did not intend to sign the applications and make the gifts acknowledged therein. In any event, Appellant provides no support other than his own view that the signature does not look the same as the one on the will. Appellant's lay comparison of the two signatures, unsupported by any expert testimony or analysis, and without any assertion by Appellant that the questioned signatures were inauthentic based on his personal familiarity with Decedent's handwriting, is not sufficient to provide evidence of forgery. See, e.g., 31A Am. Jur. 2d, Expert and Opinion Evidence § 134 (stating general rule that lay person cannot testify as to the genuineness of handwriting based solely on a comparison of writings).

The Board has reviewed the entire record and concludes that it amply supports Judge Holt's Recommended Decision Modifying Inventory.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board adopts Judge Holt's Recommended Decision.

I concur:

// original signed
Katherine J. Barton
Acting Administrative Judge

// original signed
David B. Johnson
Acting Administrative Judge